(15)

IN THE HIGH COURT OF JUDICATURE
CHHATTISGARH AT BILASPUR

W.P.NO. 764 / 2002

Petitioners : 1. Shri Narayan Singh Sinha, S/o Kartik Ram Sinha , aged about 52 years, Branch Manager, District Co-operative Bank, Branch Fingeshwar

2. Shri Sewak Ram Verma, S/o Manrakhan Lal Verma, aged about 53 years, Branch Manger, District Co-operative Bank, Branch Kodwa

3. Babulal Dewangan S/o Ramdayal Dewangan, aged about 53 years, Branch Manager, District Co-operative Bank, Branch Baloda Bazar,

4. Thakur Ram Yadav S/o Tula Ram Yadav, aged about 57 years, Branch Manager, District Co-operative Bank, Branch Lawan.

5. Shri Banshlal Markande S/o Fattelal Markande, aged about 53 years, Branch Manager, District Co-operative Bank, Branch Kosmandhi.

6. Shri Gandhi Ram Pal S/o Biselal Pal, aged about 53 years, Branch Manager, District Co-operative Bank, Branch Rohansi

7. Shri Sant Ram Sahu S/o Shri Kriparam Sahu, aged about 54 years, Branch Manager, District Co-operative Bank, Branch Palari

8. Shri Manoharlal Thakur S/o Shri Indal Singh Thakur, aged about 46

उपायुक्त, बिलासपुर (छ.ग.)

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District Co-operatve Bank, Branch Aarang.

17. Shri Daya Ram Sahu S/o Shri Dhan Ram Sahu, aged about 57 years, Branch Manager, District Co-operatve Bank, Branch Awanpur

18. Shri Kishore Kumar Bagh S/o Subaco Bagh, aged about 40 years, Branch Manager, District Co-operatve Bank, Branch Navapara

19. Shri Samye Lal Sonkar S/o Dhan Ram Sonkar, aged about 58 years, Branch Manager, District Co-operatve Bank, Branch Korpa

20. Shri J.N.Shrivastava S/o Shashi Bhusan Shrivastava, aged about 55 years, Branch Manager, District Co-operatve Bank, Branch Marod

21. Chandrahas Gupta S/o Shri Narayan Prasad Gupta, aged about 54 years, Branch Manager, District Co-operatve Bank, Branch Kurudh

22. Kanhaiya Lal Sonkar S/o Sunhar Lal Sonkar, aged about 54 years, Branch Manager, District Co-operatve Bank, Branch Magarload

23. Thisendra Patel S/o Ram Prasad Patel, aged about 49 years, Branch Manager, District Co-operatve Bank, Branch Basna

24. Rupsingh Kaiwart S/o Shivdayal Kaiwart, aged about 54 years, Branch Manager, District Co-operatve Bank, Branch Bhatgaon.

25. Bhognath Patel S/o Dayaram Patel, aged about 39 years, Branch Manager, District Co-operative Bank, Branch Bewarpur.

26. Biharilal Chandrakar S/o Mekhnath Chandrakar, aged about 54 years, Branch Manager, District Co-operative Bank, Branch Ghariyabandh

27. Ramdayal Shav S/o Gangu Ram Shav, aged about 55 years, Branch Manager, District Co-operative Bank, Branch Jhalap

28. Pawan Kumar Sharma S/o Gajanand Sharma, aged about 52 years, Branch Manager, District Co-operative Bank, Branch Mahasamund

29. Shri Jeevan Lal Dewan S/o Khejau Ram Dewan, aged about 44 years, Branch Manager, District Co-operative Bank, Branch Pirdha

30. Shri Beni Ram Sinha S/o Shri Dhananjai Sinha, aged about 57 years, Branch Manager, District Co-operative Bank, Branch Sankara

31. Shri Ram Gulal Sahu S/o Shri Biharilal Sahu, aged about 59 years, Branch Manager, District Co-operative Bank, Branch Tumgaon

32. Jeewan Lal Sahu S/o Shri Bhukan Lal Sahu, aged about 44 years, Society Manager, District Co-operative Bank, Branch Fingeshwar

33. Shri Mohan Lal Yadav S/o Shri Ram Lal Yadav, aged about 52 years,

Society Manager, District Co-operative Bank, Borsi, Branch Fingeshwar

34. Shri Madan Lal Yadu, S/o Kapil Nath Yadu, aged about 54 years, Society Manager, District Co-operative Bank, Bhasera, Branch Fingeshwar

35. Shri Bhukan Lal Sahu S/o Shri Purushottam Lal Sahu, aged about 51 years, Society Manager, District Co-operative Bank, Belar, Branch Fingeshwar

36. Shri Prem Lal Sahu S/o Shri Dular Singh Sahu, aged about 40 years, Society Manager, District Co-operative Bank, Lachkera, Branch Fingeshwar

37. Shri Parmanand Sinha S/o Shri Ramnath Sinha, aged about 54 years, Society Manager, District Co-operative Bank, Charoda, Branch Fingeshwar

38. Shankar Lal Chandrakar S/o Shri Pyarelal Chandrakar, aged about 52 years, Society Manager, District Co-operative Bank, Gundardehi, Branch Fingeshwar

39. Shri Gajraj Singh Verma S/o Shri Pahu Ram Verma, aged about 49 years, Society Manager, District Co-operative Bank, Risda, Branch Baloda Bazar.

40. Shri Baisakhu Ram Sahu S/o Shri Bhusali Ram Sahu, aged about 55 years, Society Manager, District Co-

Operative Bank, Kamariya Branch Baloda Bazar.

41. Shri Ramji Sahu, s/o. Shri Firthu Ram Sahu, aged about 49 years, Society Manager, District Cooperative Bank, Barsela, Branch Baloda Bazar,

42. Shri Rajesh Kumar Verma s/o. Shri Tekram Verma, aged about 32 years, Society Manager, District Cooperative Bank, Semradih, Branch Baloda Bazar.

43. Shri Ramesh Kumar Verma S/o. Shri Phool Singh Verma, Society Manager, District Co-operative Bank, Kamrada, Branch Baloda Bazar.

44. Shri Veer Singh Nirmalkar, s/o. Shri Ghasiaram Nirmalkar, aged about 52 years, Society Manager, District Co-operative Bank, Raseda, Branch Baloda Bazar.

45. Shri Rewa Ram Verma s/o. Sada Ram Verma, aged about 52 years, Society Manager, District Co-operative Bank, Damru, Branch Baloda Bazar.

46. Shri Pardeshi Lal Soni, s/o. Bhagwati Soni, aged about 46 years, Society Manager, Distt. Co-operative Bank Baloda Bazar.

47. Shri Hemlal Sahu, s/o. Kartik Ram Sahu, aged about 52 years, Society Manager, Distt. Co-operative Bank, Baloda Bazar.

48. Shri Jharu ram Sahu, s/o. Ramdayal aged about 59 years, Supervisor, District Co-operative Bank, Ganj Branch Raipur.

49. Murlidhar Sahu, s/o. Rajauram, aged about 52 years, Society Manager, District Co-operative Bank, Ganj Branch, Raipur.

50. Devendra Kumar Pandey, S/o. Ramprasad Pandey, aged about 30 years, Society Manager, District Co-operative Bank, Ganj Branch, Raipur

51. Rajaram Sahu, s/o. Ramadhar Sahu, aged about 43 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

52. Sakharam Sahu, s/o. Dhiraji Ram, aged about 52 years Society Manager District Co-operative Bank, Ganj Branch, Raipur

53. Gajanand Sharma, s/o. Tribhuvan Prasad Sharma, aged about 52 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

54. Chandrahas Sharma, s/o. Jharuram Sharma, aged about 47 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

55. Mirjua Muneer Ahmad, s/o. Kareem Beigh, aged about 52 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

56. Nand Kumar Soni, s/o. Bhojram, aged about 52 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

57. Bheemsen Verma, s/o. Gandhiram Verma, aged about 47 years, Society Manager District Co-operative Bank, Ganj Branch, Raipur

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VERSUS

Respondents : 1) State of Chhattisgqarh through the Principle Secretary Co-operative DKS Bhawan, Raipur.

2) District Central Co-operative Bank Ltd. Raipur, through the Chief Executive Officer, G.E. Road, Raipur.

3) District Central Co-operative Limited, Mahasamund, through the Chief Executive Officer Station Road, Mahasamund.

4) District Central Co-operative Ltd. Dhamtari through the Chief Executive Officer, Ram sagar para, Dhamtari, Distt. Dhamtari.

5) The Registrar Co-operative Societies, Krushak Nagar, Lbhandi Raipur.

6) The Additional Registrar Co-operative Societies, Krushar Nagar, Labhandi, Raipur

7) The Hon'ble State Minister for food and Civil Supply, Shri Mohammad Akbar Khan, DKS Bhawan, Raipur.

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WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

A.P.R.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.764/2002

Shri Narayan Singh & Others

Versus

State of Chhattisgarh and Others

O R D E R

Per Hon'ble Fakhruddin, J.

This order shall also dispose of W.P.Nos. 725/2002, 785/2002 and 875/2002,

2. The petitioners have filed this petition and other petitions jointly and not individually under Article 226/227 of the Constitution of India praying that the respondents be directed not to take any action against the petitioners on the basis of the declaration made in the State Assembly on 22-3-2002 and further that the respondents be directed not to take any action against the petitioners till a detailed enquiry is conducted by the responsible authorities giving full opportunity to the petitioners. The petitioners further pray that the respondents be restrained from taking any criminal or departmental action against the petitioners and further that the respondents be directed not to harass the petitioners and also that the respondents be directed not to

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take any action against the petitioners in view of the letter dated 8/4/2002 issued by respondent no.5.

3. The contention of the petitioners is that the decision has been taken to suspend them and register a criminal case against them. It is submitted that they are employees and governed by Service Rules & Regulations.

4. State has filed the return in W.P. No.764/2002 and the contents of the return have been adopted in other petitions.

5. It is contended by the respondents that certain complaints were made against the petitioners, who are working in different primary co-operative societies, that they are working under the duress of the officers of the District Co-operative Central Bank, Raipur in the matter of purchase of Gunny Bags and thereby benefited themselves. On the basis of these complaints, an enquiry was conducted for Raipur, Mahasamund and Dhamtari districts. The enquiry tem was comprising with Dy. Registrar, Co-operative Societies, which is a Class-I post, and a senior post in the hierarchy of the Co-operative department. The five enquiry teams were constituted by the Additional Registrar of Co-operative Societies. The committees have submitted their report vide Annexure-A/6 and the State Government after taking into all reasonable aspects of the enquiry report decided to conduct enquiry. Then certain questions were asked in Vidhan Sabha and the matter was discussed. The discussion whatever was

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taken place cannot be a matter of enquiry in the writ petition.

6. Having heard the learned counsel for the parties and considering the material available on record, so far as the employees of State Government are concerned, in the opinion of this Court, they are governed by M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. These rules provide safeguard to the employees.

7. Rule 9 of the aforesaid rules relates to suspension of the employees, which is quoted below :

> "9.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any authority empowered in that behalf by the Governor by general or special order, may place a government servant under suspension –
>
> (a) where a disciplinary proceeding against him is contemplated or is pending; or
>
> (b) where a case against him in respect of any criminal offence is under inventilation, enquiry of trial:
>
> (2) A government servant shall be deemed to have been placed under suspension by an order of appointing authority-
>
> (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding 48 hours:
>
> (b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not

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forthwith dismissed or removed or compulsorily retired consequent to such conviction.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant, is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so:

(b) In respect of a government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (a) the authority competent may, if it considers expedient so to do, place him

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under suspension after a copy of charges and other documents, as required by sub-rule(4) of Rule 14, have been issued to him.

(c) Where a government servant is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Central Government shall continue to be under suspension until the termination of all or any of such proceedings.

(d) An order of suspension made or deemed to have been made under this rule, may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is sub-ordinate."

8. Rule 23 of the aforesaid rules provides an appeal which reads as under:

"23. **Orders against which appeal lies:**

Subject to the provisions of rule 22, a government servant may prefer an appeal against all or any of the following orders, namely –

(i) an order imposing any of the penalties specified in rule 10 whether made by the disciplinary authority or by any appellate or reviewing authority;

(ii) an order enhancing any penalty, imposed under rule 10;

(iii) an order of suspension made or deemed to have been made under rule 9."

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9. So far as the employees of the Banks are concerned, they are governed by the rules and regulations framed by the Banks, which provide more or less similar safeguards as contended by the rival parties.

10. So far as the question regarding ~~or otherwise of~~ the statement and discussion in Vidhan Sabha is concerned, Articles 194 and 212 of the Constitution of India have been referred to by the State counsel, which read as under :

"194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined.

(4) The provisions of clauses (1), (2) and

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(3)shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

212: Courts not to inquire into proceedings of the Legislature-

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of the powers.

11. The Apex Court has considered the law in great detail in the matter of P.V. Narasimha Rao – Vs – State (CBI/SPE), 1998 (IV) SCC 626. This Court had also an occasion to deal with the said question in dispute while deciding W.P.No. 1524/2001 vide order dated 29/10/2001. The Apex Court in the case of P.V. Narasimha Rao (Supra), considering the case of Ex.P. Wason (1869) 4 QB 573: 38 LJQB, 302 has held as under:

> "Clause (1) and (2) of Article 105 are interlinked, while clause (1) secures to the Members freedom of speech in Parliament, clause (2) safeguards and protects the said freedom by conferring immunity on the members from liability in respect of anything said or any vote given by him in Parliament or in any committee thereof. This is necessary

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> because for a regulatory body like Parliament, the freedom of speech is of the utmost importance and a full and free debate is of the essence of Parliamentary democracy. In England this freedom of speech in Parliament is secured by Article 9 of the Bill of Rights. Though clause (2) of Article 105 appears to be similar to Article 9 of the Bill of Rights a closer look would show that they differ in certain aspects. Article 9 of the Bill of Rights, by prescribing that 'freedom of speech and debates on proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament', confers immunity in respect of speech, debates or proceedings in Parliament being questioned in any court or place out of Parliament. The said immunity has been construed to preclude what was said or done in Parliament in the course of proceedings there from being examined outside the Parliament for the purpose of supporting a cause of action even though the cause of action itself arose out of something done outside the Parliament."

12. So far as joining of the Minister, as party is concerned, this Court has already passed an order to delete his name. The discussion, which has taken place in Vidhan Sabha, is with reference to the questions asked and the reply given by the Minister concerned. The said discussion has taken place in accordance with the rules and practice prevailing in the Vidhan Sabha. Deliberations, discussions and the statements in the Vidhan Sabha are made as per the provisions in the Constitution, rules, practice, high traditions and conventions. So far as proceedings in the High Court under Articles 226/227 are concerned, the powers are conferred under the Constitution. The legislature, judiciary and executive have their own role to play in the democratic set-up. The disciplinary action

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against erring employee, if any, has to be judged by the disciplinary authority and/or the authority empowered under the Act, Rules and Regulations on the basis of material produced before it. So far as government servants are concerned, Article 309 and 311 of the Constitution is there. The safeguards have been provided under the Statute. They cannot be taken away and learned counsel appearing for the State fairly stated that the authorities shall act strictly in accordance with law and the rules as applicable to the employees. As such, each and individual case or class of cases of those employees shall be examined on their own merits in accordance with the law without being influenced by any of the observations.

13. Writ Petition No.725/2002 has been filed by 9 persons jointly holding different posts, Writ Petition No.764/2002 has been filed by 57 persons jointly holding different posts, Writ Petition No.785/2002 has been filed by 122 persons jointly holding different posts in different branches of Co-operative Banks and Writ Petition No.875/2002 has been filed by 13 persons jointly holding different posts in different branches of Co-operative Banks. These petitioners are holding the posts of different cadres. Each and individual case or class of cases have their own merits. The charges may be against the individual or class of individuals serving in different capacities and different role might have been played by each one of them. Each

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one of them may have his own defence, much depends on the charges. Since the aforesaid petitions have been filed jointly, ordinarily such petitions, which have been filed, would have been dismissed without adverting to the points urged by the learned counsel for the petitioner for the simple reason that the individual case and action being taken is qua each employee. This Court has applied self restraint ~~respect~~ not to dismiss the case on that ground as justice has to be tampered with mercy. Accordingly, these petitions are not thrown on that ground.

14. Learned counsel for the State submitted that so far as suspension and other proceedings are concerned, the cases of the employees shall be considered on their own merits strictly in accordance with law and without there being any extraneous considerations, as each and every employee is having his own case.

15. In view of the statement of State Counsel, in the opinion of this Court, it would be just and proper if the matter is left to the department and the bank concerned to consider the same individually or as a class. Case of each and every employee has to be considered strictly in accordance with the service rules and conditions.

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16. In the cases in hand, the charge against each of the petitioners may be individual and their cases will be examined individually on their own merits and dealt with strictly according to law without being influenced by any other considerations. If any action is taken against all and any of the petitioners and all or any of them is suspended, he or she is at liberty to avail the remedy contemplated under the rules including the one that of appeal under the rules applicable to them.

17. So far as the prayer regarding restraining the respondents from taking departmental or criminal action is concerned, in view of the discussions made above the departmental proceedings shall be conducted as per law and the disciplinary authority/competent authority in regard to criminal action shall take such actions which are warranted including lodging of first information report, complaint to the Court and in case such proceedings are initiated the authorities concerned shall investigate, enquire and deal with the matter strictly in accordance with law. However, an employee cannot escape or forestall an enquiry in respect of allegations or charges made against him, as per the service conduct rules. The acts,

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omissions and commissions shall be judged on their own merits. If the authorities proceed in accordance with law, there will be no question of harassment. An employee who is a public servant is answerable.

18. Subject to what has been stated above, these petitions are disposed of accordingly.

19. A photo copy of this order be placed in the connected cases.

SD/-
JUSTICE FAKHRUDDIN

8/5/2002

Hande/-